

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PETER G. SEBALA,) CIVIL NO. 04-00404SPK-LEK
Plaintiff,) Honolulu, Hawaii
vs.) February 7, 2006
DR. JAMES G. ROCHE,) 10:00 a.m.
Secretary, Department of the) NON-JURY TRIAL
Air Force,) VOLUME 1
Defendant.)

TRANSCRIPT OF NON-JURY TRIAL
BEFORE THE HONORABLE SAMUEL P. KING,
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: VENETIA K. CARPENTER-ASUI, Esq.
Haseko Center
820 Mililani Street, Suite 812
Honolulu, Hawaii 96813

For the Defendant: R. MICHAEL BURKE, Esq.
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

ERIN WIRTANEN, Major, USAF
Trial Attorney
Air Force Legal Services Agency
General Litigation Division
1501 Wilson Blvd., 7th Floor
Arlington, Virginia 22209

Official Court Reporter: Cynthia Fazio, RMR, CRR
United States District Court
P.O. Box 50131
Honolulu, Hawaii 96850

Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

EXHIBIT A

1 Q Neither of Mr. Sebala's trainers informed you that there
2 was any problem with Mr. Sebala getting certified on any of the
3 machinery, correct?

4 A Yes.

5 Q At the time you hired Mr. Sebala, you were informed that
6 he had 26 to 27 years of experience working at Oahu Sugar
7 Company in the tire maintenance shop, correct?

8 A That's correct.

9 Q The position Mr. Sebala was hired for temporary one-year
10 mobile equipment servicer had been vacant for one year prior to
11 his hire, correct?

12 A That's correct.

13 Q During the course of Mr. Sebala's temporary one-year
14 appointment as a mobile equipment servicer, he did not receive
15 a single disciplinary action; is that correct?

16 A That is correct.

17 Q Temporary one-year employees are entitled to sick leave,
18 correct?

19 A Yes, they are.

20 Q Please explain what type of sick leave benefits temporary
21 one-year employees are eligible for.

22 A They earn sick leave at four hours a pay period.

23 Q Mr. Sebala began work on January 28th, '02. Approximately
24 how many sick days would he have accrued by August 28th, '02?

25 A I can't tell you. I don't have a calculator.

1 a civilian progress review worksheet, correct?

2 A That is correct.

3 Q Please turn to Exhibit 75-86.

4 Do you have it, Mr. Nunes?

5 A Yes, I do.

6 Q What is this document?

7 A It's called an Air Force Form 860B.

8 Q Whose handwriting is on this page?

9 A That is my handwriting.

10 Q Whose signature is at the bottom left of the page?

11 A That is my signature.

12 Q What is the date on the bottom right of the page?

13 A It says 10/3/02.

14 Q Was that about the date you prepared this document?

15 A Yes, it was.

16 Q Who typed the words "has met required skill level"?

17 A I did that.

18 Q Who wrote the words by hand "good job," apostrophe?

19 A I did that also.

20 Q Who placed the Xs down the middle between the columns
21 "needs significant improvement" and "needs little or no
22 improvement"?

23 A I did that.

24 Q This form is dated after Mr. Sebala called in sick on
25 8/28/02, correct?

1 one-year term position, correct?

2 A I'm not sure about that. He wasn't under me.

3 Q He remained on the job after Mr. Sebala left, correct?

4 A Yes.

5 THE COURT: Who did?

6 MS. CARPENTER-ASUI: Chris Vargas, another employee,

7 Your Honor.

8 THE COURT: How do you spell that last name?

9 MS. CARPENTER-ASUI: V-A-R-G-A-S.

10 BY MS. CARPENTER-ASUI:

11 Q From your observation of Christopher Vargas and Mr. Sebala
12 during the period they worked -- both worked there from 1/02 to
13 1/03, who appeared older to you, Mr. Sebala or Chris Vargas?

14 A I -- you know, I have a problem with age. I -- age is not
15 relevant to me in any case. I really don't care how old people
16 are. So I couldn't tell you. I'll be guessing.

17 Q Mr. Nunes, I'll represent to you that the record
18 establishes and it's undisputed that on 5/3/03, Chris Vargas
19 was 25 years old. Mr. Sebala was 53 years old, more than twice
20 his age.

21 Is it still your testimony to this court that you are
22 unable to determine which man was older than the other?

23 A You know, I'll be second-guessing, you know, just apples
24 and oranges, you know. I -- yes, I -- you know, I won't take a
25 poke at it.

1 Q In 2003, did you know a supervisor for the vehicle
2 operation section on the vehicle operation side of the squadron
3 named Ricky Padua?

4 A Yes.

5 Q Did you learn that supervisor Ricky Padua was the father
6 of Chris Vargas' girlfriend, the woman he later married?

7 A Yes.

8 Q Isn't it true that supervisor Ricky Padua told you that he
9 was related to Chris Vargas?

10 A Yes, he did.

11 Q When did you first learn that Mr. Sebala filed an age
12 discrimination case accusing you of committing age
13 discrimination against him?

14 A I can't recall the date.

15 Q Can you recall the year?

16 A Not even that. Sorry.

17 Q At some point after January 28th, '03, when Mr. Sebala
18 left employment because his one-year term ended, you learned
19 that Mr. Sebala's temporary position became available as a
20 permanent position, correct?

21 A That's correct.

22 Q On at least two occasions you approached Christopher
23 Vargas and asked him to apply for Mr. Sebala's job, which was
24 now open as a permanent mobile equipment servicer position,
25 correct?

1 A That's correct.

2 THE COURT: You asked him to apply?

3 THE WITNESS: Yes.

4 BY MS. CARPENTER-ASUI:

5 Q You approached him while he was at a mobile equipment --
6 strike that.

7 You also told Christopher Vargas: "You need to go to
8 the website and put your application in"?

9 A Yes, I did.

10 Q You knew that you were the selecting official for
11 Mr. Sebala's old job, which was now open as a permanent mobile
12 equipment servicer position, correct?

13 A Correct.

14 Q You did not inform Mr. Sebala or the other one-year
15 temporary employee Ron Yamashita, whose position also ended,
16 about the mobile equipment servicer job, did you?

17 A No, I didn't.

18 Q Why didn't you inform those other employees?

19 A I didn't feel I had to.

20 Q You had their contact information in your personnel file
21 in your office, but you testified you didn't bother to look at
22 it, correct?

23 A That's correct.

24 THE COURT: Do you have to post a notice?

25 THE WITNESS: Yes.

1 THE COURT: Job opens like that.

2 THE WITNESS: Yes. We -- I did have a meeting -- can
3 I explain, sir?

4 THE COURT: You had a meeting?

5 THE WITNESS: Yeah, I had a meeting with shop
6 personnel, and I asked everybody if they knew anybody that
7 wanted to apply for the position since it was open, to have
8 them go on the web and put their names in.

9 THE COURT: But Vargas you spoke to personally?

10 THE WITNESS: Yes, 'cause he had saw me earlier
11 that -- he mentioned to me that he was interested in the job.

12 BY MS. CARPENTER-ASUI:

13 Q And just to confirm, you approached Mr. Vargas on two
14 occasions and told him to apply for the job?

15 A Yes. Yes.

16 Q And in fact, you hired Mr. Vargas to fill Mr. Sebala's old
17 position, which was now a permanent mobile equipment servicer
18 job, correct?

19 A Yes, I did.

20 Q You did not interview all of the applicants, did you?

21 A No.

22 Q But you did interview Mr. Vargas for the position, didn't
23 you?

24 A No, I did not.

25 Q Do you have any explanation why Mr. Vargas testified under

1 A Yes.

2 Q And you believe that's why Mr. Oyadomari would say that
3 you said you hired Christopher Vargas because he's younger, he
4 would commit perjury and risk going to jail because you gave
5 him a written reprimand?

6 A I suppose so.

7 Q What year did you give him that written reprimand?

8 A I'm not sure of the date on that one.

9 THE COURT: That's Oyadomari?

10 MS. CARPENTER-ASUI: Yes, Your Honor.

11 THE COURT: You gave Mr. Oyadomari a written
12 reprimand?

13 THE WITNESS: Yes, I did.

14 THE COURT: But that was before this supposed
15 conversation you had about why you hired Vargas?

16 THE WITNESS: Yes, it was.

17 BY MS. CARPENTER-ASUI:

18 Q Isn't it true that you approached Michael Oyadomari while
19 he was working in his stall in the tire shop and told him that
20 Mr. Sebala threatened to file a discrimination case against
21 you?

22 A I don't recall saying anything like that to him.

23 Q Do you know why Mr. Oyadomari would testify to that under
24 oath?

25 MAJOR WIRTANEN: Objection. Asking --

1 THE COURT: Why should he know that? You're asking
2 him to guess.

3 MS. CARPENTER-ASUI: Withdrawn, Your Honor.

4 BY MS. CARPENTER-ASUI:

5 Q Isn't it true that you approached Ace Soares and told him
6 that Mr. Sebala filed a discrimination case against you and
7 that's why you wanted a written statement from him two years
8 after the fact?

9 MAJOR WIRTANEN: Objection, compound.

10 THE COURT: Yeah --

11 MS. CARPENTER-ASUI: I'll break it down, Your Honor.

12 THE COURT: Getting complicated.

13 BY MS. CARPENTER-ASUI:

14 Q Isn't it true that you approached Ace Soares and told him
15 that Mr. Sebala filed a discrimination case against you?

16 A I believe I did.

17 Q Isn't it true that you also approached Robin Hastalero and
18 told him that Mr. Sebala filed a discrimination case against
19 you?

20 A I can't recall that.

21 Q Isn't it true you also approached Darrell Lim and told him
22 that Mr. Sebala filed a discrimination case against you?

23 A Again, I can't recall those.

24 Q Isn't it true you also approached Alan McGaniss and told
25 him that Mr. Sebala filed a discrimination case against you?

1 A No, I can't recall that.

2 Q You can't recall; does that mean it is possible but you
3 just don't recall?

4 A You know, I don't think it happened.

5 Q Isn't it true that two years after December 12th, 2002,
6 you asked Mr. Soares to write up a statement about Mr. Sebala?

7 A Yes, I did.

8 Q And that was to assist you in responding to the EEO age
9 discrimination complaint, correct?

10 A I really -- I realize that that is correct, yes.

11 Q And you typed that statement for Mr. Soares, correct?

12 A I did the typing, yes.

13 Q And you translated Mr. Soares' explanation to you of what
14 happened into your words and typed them onto the paper,
15 correct?

16 A I did translate what he told me 'cause he has a hard time
17 of explaining himself.

18 Q Would you please turn to Exhibit 75-78. Have you ever
19 seen this document before?

20 A Yes.

21 Q What is this?

22 A This is that Memo for Record that Ace and I formulated.

23 Q But you typed it up, correct?

24 A I typed it out, yes.

25 Q And Mr. Soares signed it after you typed it up?

1 A Yes, he did.

2 Q And basically the memo is about words spoken by Mr. Sebala
3 to Mr. Soares, correct?

4 A Yes.

5 Q And the words were: "What? You like something?" And
6 that was the "it," right, no other words?

7 A No other words.

8 MS. CARPENTER-ASUI: Okay. Your Honor, plaintiff
9 moves to introduce 75-78 into evidence.

10 MAJOR WIRTANEN: No objection.

11 THE COURT: Say that again.

12 MS. CARPENTER-ASUI: Plaintiff moves to introduce it
13 into evidence.

14 MAJOR WIRTANEN: No objection.

15 THE COURT: It's in evidence.

16 (Plaintiff's Exhibit 75-78 was received in evidence.)

17 THE COURT: That's "it" being Exhibit 75, Page 78.

18 BY MS. CARPENTER-ASUI:

19 Q You and Mr. Soares are friends outside of work, correct?

20 A Not really. We don't socialize.

21 Q You don't socialize with Mr. Soares?

22 A No.

23 Q Were you the best man at his wedding ceremony?

24 A Yes, I was.

25 Q Isn't it true that you said to Michael Oyadomari when you

1 asked him to train Mr. Sebala that: "Mr. Sebala was an expert
2 already from Oahu Sugar Company, go in there and watch how he
3 runs the machines"?

4 A No, I did not say that.

5 Q Isn't it true that you asked Mr. Oyadomari how Mr. Sebala
6 was doing regarding his job performance in the tire shop?

7 A Yes, I did.

8 Q And isn't it true that Mr. Oyadomari told you that:
9 "Mr. Sebala was doing good, there was no need to train him, no
10 need to teach him nothing"?

11 A Not in those words. He just said that Mr. Sebala was okay
12 on the machines.

13 Q Mr. Nunes, you selected Christopher Vargas for the
14 permanent mobile equipment servicer job based on what?

15 A Based on the reviewing the resumes and the elements of the
16 job description and you needed -- can I explain further?

17 Q Yes.

18 A Okay. I -- I look at the qualifications for one thing,
19 you know, work experience, how much experience they have
20 concerning the job. I also look at the individual as a whole.
21 I take the whole person into account. I look at what kind of
22 character that person is, what kind of worker he is, what kind
23 of work ethics he have, how is his relationship with
24 management, how is his relationship with fellow workers, how is
25 his attitude towards our mission on Hickam Air Force Base.

1 So with that in mind, I look at the whole picture.

2 The whole -- the whole individual.

3 Q What was it about Mr. Vargas' resume, if anything, that
4 was more impressive to you than Mr. Sebala's resume?

5 A It wasn't so much the resume. They were kind of like
6 almost even.

7 Q Mr. Sebala's resume indicated that he had 26 to 27 years
8 of work experience at Oahu Sugar in the tire shop, and you're
9 aware that he had another year of experience as a temporary
10 mobile equipment servicer, so that would give him a total of 28
11 years of experience --

12 MAJOR WIRTANEN: Objection.

13 BY MS. CARPENTER-ASUI:

14 Q -- in a tire shop, correct?

15 THE COURT: Yeah, you're making a speech.

16 MAJOR WIRTANEN: And that's a mischaracterization of
17 the evidence.

18 THE COURT: Reduce it to a question. I sustain the
19 objection.

20 MS. CARPENTER-ASUI: Yes, Your Honor.

21 BY MS. CARPENTER-ASUI:

22 Q How many years of experience did Mr. Sebala's resume
23 indicate he had at Oahu Sugar?

24 A He had 20-plus years.

25 Q And how many years of experience did he have working in

1 temporary mobile equipment servicer job?

2 A He had that one year.

3 Q So 20-something years, correct?

4 A Right.

5 Q How many years of experience did Mr. Vargas have according
6 to his resume?

7 A About six years.

8 Q Six years. And how old was Mr. Vargas on the date he
9 submitted that resume in 2003 to you?

10 A I have no idea.

11 Q The record reflects he was 25 years of age, correct?

12 A I don't know. You telling me that. Yeah, I suppose so if
13 he was.

14 Q So, is it still your testimony that their experience was
15 even?

16 A The experience side, no. But let me explain?

17 THE COURT: Yes, she asked you whether they were even,
18 you can explain.

19 THE WITNESS: As far as the qualities of each
20 individual, that's where the difference lies.

21 BY MS. CARPENTER-ASUI:

22 Q Which qualities?

23 A Those qualities that I mentioned to you: Their work
24 ethics, their attitudes, their ability to relate to others.

25 Q Okay. We're going to go down that list. Number two, you

1 said the elements of the job description?

2 A Yes.

3 Q Tell us what elements of the job description weighted Mr.
4 Vargas compared to Mr. Sebala.

5 A They both -- as far as Mr. Vargas, yeah, he was --
6 according to his resume, he was able to do and meet all the
7 elements of the position description, he was able to change
8 tires on various equipment, he was able to do tire repairs,
9 tire services, he was able to use various test equipments and
10 analyzers, et cetera. And the type of equipment that he worked
11 on was a wide variety of equipment as well.

12 Q You are you done?

13 A Yes.

14 Q Mr. Vargas never worked in a tire shop, correct?

15 THE COURT: Before.

16 BY MS. CARPENTER-ASUI:

17 Q Before?

18 A Before, yes, he did.

19 Q What tire shop did he work at?

20 A There was two tire companies that he worked for on the
21 Mainland. I can't recall the names.

22 Q Are you sure he worked for two tire companies on the
23 Mainland?

24 MAJOR WIRTANEN: Objection. Witness has answered.

25 THE COURT: You got the answer. You didn't like it.

1 MS. CARPENTER-ASUI: Withdrawn, Your Honor.

2 BY MS. CARPENTER-ASUI:

3 Q Isn't it true that Mr. Vargas worked in auto body paint
4 shops?

5 A Yes, he did.

6 Q And he had some military experience, correct?

7 A Yes, he does.

8 Q What qualifications, that was your third quality, did
9 Mr. Vargas have that were superior to Mr. Sebala?

10 A As far as time, yeah, in the field, it's obvious that
11 Mr. Sebala had 20-plus years versus Mr. Vargas' six. And
12 that's the extent of that.

13 Q Well, that doesn't answer my question. My question was:
14 You said qualifications was one of the qualities that you
15 determined Mr. Vargas was superior to Mr. Sebala.

16 A Yes.

17 Q But you just testified that the 20-plus years were more
18 than the six years?

19 A That's part of it. It's not the whole picture.

20 Q Work experience concerning the job was your number four.
21 What superiority did Mr. Vargas have over Mr. Sebala's 28 years
22 of experience?

23 A Again, Mr. Vargas worked in various shops on various
24 equipment doing various type of work. And in that sense, yes,
25 he is superior to Sebala if Sebala only stayed in one place for

1 20-plus years.

2 Q And it's true that when Mr. Vargas worked in the auto body
3 shops, he did automobile painting, correct?

4 A That's correct.

5 Q Next you said the individual as a whole. How was
6 Mr. Vargas superior to Mr. Sebala?

7 A Okay. I had a year to observe both candidates, Mr. Sebala
8 and Mr. Vargas. And Mr. Vargas worked in a stall next to my
9 office as a auto body man in the allied trade section of our
10 shops. So every day I'd see Mr. Vargas there working. He had
11 good work ethics, he had a good attitude towards his job, he
12 had no problems with any employees, any fellow workers. He
13 just showed a lot of positive things about his job that he
14 portrayed when he worked every day. He was a hard worker.

15 Q Mr. Vargas didn't work under your supervision, did he?

16 A No, he didn't.

17 Q How many hours of the day would you spend watching
18 Mr. Vargas performing his job duties?

19 A I'm in and out of my office, like, I could go in and out
20 of there, say, about on the hour, maybe about five to ten
21 times. So, every time I go out there, I looking over at the
22 stall and I see Mr. Vargas working. So I'll stand there and
23 just observe him, you know, what he's doing.

24 Q You said he had no problems with fellow workers. Isn't it
25 true that Mr. Vargas will testify that he was shunned by his

1 THE COURT: Well, you didn't say that.

2 MS. CARPENTER-ASUI: I'll ask it again, Your Honor.

3 BY MS. CARPENTER-ASUI:

4 Q Did you write up Mr. Vargas for insubordination to you?

5 A I wrote -- I gave him --

6 MAJOR WIRTANEN: Your Honor, objection. That's --
7 goes into a line of questioning that was after Mr. Vargas was
8 hired to which --

9 THE COURT: I understand that's subject to a Motion to
10 Strike.

11 MAJOR WIRTANEN: Sir, when would you like us to give
12 that Motion to Strike?

13 THE COURT: I made it for you.

14 MAJOR WIRTANEN: Okay.

15 THE COURT: Go ahead.

16 MS. CARPENTER-ASUI: Am I stricken or can I keep
17 going? I'm not sure what the status is.

18 THE COURT: All the information you're trying to get
19 as to what Mr. Vargas' relation was with his bosses after he
20 was hired is subject to a Motion to Strike. Which I will
21 decide eventually.

22 MS. CARPENTER-ASUI: Oh, okay.

23 BY MS. CARPENTER-ASUI:

24 Q So you did write up Mr. Soares -- Mr. Vargas for
25 insubordination against you, correct?

1 A I gave him a letter of counseling, a letter of record or
2 something like that.

3 Q And what was the dispute between yourself and Mr. Vargas
4 about?

5 A Actually the letter that I gave him was a dispute between
6 him and Mr. Soares.

7 Q But you yourself wrote him up for insubordination,
8 correct, against you?

9 A No.

10 Q No?

11 A I wrote a comment on his 971.

12 Q Right.

13 A But I sat down and I counseled him on that issue, yes.

14 Q And you wrote down on that 971 that he was insubordinate
15 to you and counseled for that, correct?

16 A In that case, yes.

17 Q What did he say to you that was insubordinate?

18 A He -- he was angered at something that day, and I wasn't
19 sure. I went there with all ears trying to listen to what he
20 had to say. A lot of things came out of his mouth.

21 Q And what were they exactly, the exact words, please?

22 A It sounded like he spoke maybe -- kind of like maybe under
23 his breath, I couldn't say for sure what he said. It wasn't,
24 you know, it wasn't hi or good-bye.

25 Q It was the F-word, correct?

1 A I -- I suppose so, yeah.

2 Q And he said that to you, his superior officer, correct?

3 A Well, he -- he said it under his breath. It looks like
4 he -- he kind of turned away and he walked away like, you know,
5 out of anger.

6 Q But you heard it, correct?

7 A Just a little. I didn't, you know, hear it real clearly.
8 It was under his breath, but he did -- it sounded like that's
9 what he said.

10 Q So are you saying he didn't say it, you're not sure?

11 A No, no, it sounded like he may have said that.

12 Q But you're not sure now?

13 A No, it's not that I'm not sure. It's just was muffled,
14 that's all.

15 Q Okay. And then you also wrote him up for an incident with
16 acting supervisor Ace Soares, correct?

17 THE COURT: This is all subject to a Motion to Strike.

18 MS. CARPENTER-ASUI: Yes, Your Honor.

19 MAJOR WIRTANEN: Your Honor, in the interest of
20 judicial efficiency, we would ask that the honorable court
21 decide the motion and not hear this evidence, because I believe
22 that the plaintiff is going to ask a lot -- several hours'
23 worth of questioning on this topic to a few witnesses.

24 THE COURT: How much time are you going to spend on
25 it?

1 MS. CARPENTER-ASUI: This is my last question to this
2 witness on it, Your Honor, because he -- he wrote --

3 THE COURT: I'll let you proceed. When you finish
4 this line, let me know so I can box that testimony from the
5 time you started to then.

6 BY MS. CARPENTER-ASUI:

7 Q What did Mr. Vargas say to Ace Soares that caused you to
8 write him up?

9 A They had a heated argument about something. I -- I later
10 found out through my investigation that Mr. Soares was teasing
11 him about something and Mr. Vargas blew up.

12 Q What does that mean, blew up?

13 A "Blew up" means he lost his temper.

14 Q And what happened?

15 A And they had a heated argument as a result of that. So
16 I -- I heard the yelling match out there and I went to
17 investigate, find out what was going on. And I stopped the
18 two -- both of them and I took them in my office, and I sat
19 down and I talked to them.

20 THE COURT: And wrote it up?

21 THE WITNESS: And wrote it up.

22 BY MS. CARPENTER-ASUI:

23 Q What words did Mr. Vargas use against Mr. Soares?

24 THE COURT: If you heard him.

25 THE WITNESS: You know, again, he was -- you know, he

1 used the F-word, you know.

2 BY MS. CARPENTER-ASUI:

3 Q Did Mr. Sebala ever use the F-word against you?

4 A No.

5 Q Did you ever write up Mr. Sebala for insubordination of
6 any kind?

7 A I just --

8 THE COURT: You just got through talking about it,
9 Sebala.

10 MS. CARPENTER-ASUI: No, this one, Your Honor.

11 THE COURT: Oh, wait a minute, you through with all
12 that other stuff about --

13 MS. CARPENTER-ASUI: Just about. Just trying to find
14 the exhibit, Your Honor.

15 BY MS. CARPENTER-ASUI:

16 Q Did Mr. Sebala ever --

17 THE COURT: If you're through with the stuff about
18 Vargas, all right, that testimony from the beginning until now
19 is subject to a Motion to Strike.

20 Now we're on a new trip.

21 MS. CARPENTER-ASUI: Can I ask the witness to turn to
22 Exhibit 9A.

23 THE COURT: Exhibit?

24 MS. CARPENTER-ASUI: 9A.

25 THE COURT: 9A. Just so the record will be clear,

1 what we're talking about is the testimony of Mr. Vargas'
2 actions, if any, after he was hired?

3 MS. CARPENTER-ASUI: Yes, Your Honor, that's correct.

4 BY MS. CARPENTER-ASUI:

5 Q And so, Mr. Nunes, do you see 9A?

6 A Yes, I do.

7 Q Is this your write-up of Mr. Vargas after he was hired?

8 A Yes, it is.

9 Q And how about the next one, 10?

10 THE COURT: A? Oh, okay.

11 BY MS. CARPENTER-ASUI:

12 Q And the next Exhibit Number 10, that's another write-up
13 after he was hired for the full -- permanent job, right?

14 A Yes.

15 MS. CARPENTER-ASUI: Your Honor, plaintiff moves to
16 introduce Exhibit 9A and 10, subject to your ruling on the
17 Motion to Strike.

18 THE COURT: Well, Exhibit 10 is the same thing we've
19 been talking about.

20 And exhibit -- this is still all that stuff after he
21 was hired.

22 MS. CARPENTER-ASUI: Yes, Your Honor. We're trying to
23 move them into evidence subject to your Motion to Strike.

24 THE COURT: Subject to a Motion to Strike, add it to
25 the subsequent -- earlier testimony.

1 Q Mr. Nunes, would you agree that it's in your best interest
2 to deny making the statement that you selected one applicant
3 over the other because of his age?

4 A I guess so, yes.

5 Q Isn't it true that Mr. Oyadomari told you that Mr. Vargas
6 was inexperienced and unable to handle the tire-changing
7 machine?

8 THE COURT: Who told you?

9 MS. CARPENTER-ASUI: Oyadomari told Mr. Nunes.

10 THE COURT: Before you hired him?

11 MS. CARPENTER-ASUI: After, Your Honor.

12 THE COURT: Oh, after you hired him. Well, this will
13 be subject to a Motion to Strike.

14 MS. CARPENTER-ASUI: But, Your Honor, this goes to
15 Mr. Nunes' testimony that this Vargas is totally qualified, but
16 we're going to hear a lot of evidence from Mr. Vargas himself
17 that he couldn't do the job.

18 THE COURT: We'll get to Mr. Oyadomari when we get to
19 him.

20 MS. CARPENTER-ASUI: Yes, Your Honor.

21 THE COURT: Did he tell you that?

22 THE WITNESS: I don't recall that statement.

23 THE COURT: Okay.

24 MS. CARPENTER-ASUI: I'm going to go to the deposition
25 transcript at this time. Page 76?

1 THE CLERK: What line, please?

2 MS. CARPENTER-ASUI: Line 25.

3 THE CLERK: Thank you. So it's all the way on the
4 bottom, correct?

5 MS. CARPENTER-ASUI: Yes.

6 THE COURT: What page?

7 MS. CARPENTER-ASUI: Your Honor, Page 76, Line 25 at
8 the bottom. And I'll read it out loud.

9 BY MS. CARPENTER-ASUI:

10 Q "Question: Do you recall Mr. Oyadomari telling you that
11 he told you that Mr. Vargas was inexperienced and was unable to
12 handle the tire changing machine?

13 "Answer: I recall Mike mentioning that, yes."

14 Was that your testimony under oath?

15 A Yes, it was. I guess I didn't understand the question
16 fully.

17 Q Isn't it true that Mr. Soares also told that you
18 Mr. Vargas was having difficulty operating the tire-changing
19 machine?

20 THE COURT: Before he was hired?

21 MS. CARPENTER-ASUI: After, Your Honor.

22 THE WITNESS: I don't recall Soares mentioning that to
23 me.

24 BY MS. CARPENTER-ASUI:

25 Q Isn't it true that Mr. Vargas himself admits that it took

1 him almost three months to get control of the tire-changing
2 machine?

3 A Yeah, but the -- can I say something on that?

4 Q Yes.

5 THE COURT: Yeah, sure.

6 THE WITNESS: The time it takes to qualify yourself or
7 get certified on a piece of equipment is irrelevant, yeah,
8 because when -- as I -- I'm the certifier -- when I see that
9 the person is totally proficient on that equipment, that's when
10 I decide he is certified. Even under the advisement of my
11 trainers, people that I assign to that, to train the
12 individual, I'll go over there and actually look at the
13 operation, how -- how the individual is doing.

14 MS. CARPENTER-ASUI: Nothing further, Your Honor.

15 THE COURT: Cross-examine --

16 MAJOR WIRTANEN: Yes, Your Honor.

17 THE COURT: -- Major?

18 CROSS-EXAMINATION

19 BY MAJOR WIRTANEN:

20 Q Good morning, Mr. Nunes.

21 A Good morning.

22 Q Mr. Nunes, what is your date of birth?

23 A September 30th, 1949.

24 Q And are you aware that the plaintiff, Mr. Sebala, was also
25 born in 1949?

1 A Specifically changing tires, you talking about?

2 Q Well, did you make the statement that Mr. Sebala had a lot
3 of experience as a tire man?

4 A Yes.

5 Q At times were you Mr. Sebala's acting supervisor?

6 A In December 2002.

7 Q Did Mr. Sebala ever ask you any questions about how to
8 perform his job duties?

9 A No.

10 Q Did it ever appear to you that Mr. Sebala did not know how
11 to perform his job duties?

12 A The job has a tire position and mechanic, there's two
13 portions to that job. Specifically, which one you want me to
14 answer?

15 Q Well, did it ever appear to you that Mr. Sebala did not
16 know how to perform any of his job duties?

17 A No, he was pretty proficient in the tires. On the
18 automotive side he had a little trouble.

19 Q What does that mean?

20 A He wasn't as proficient in tires as he was as a automotive
21 mechanic.

22 Q He was not as proficient in tires as he was in automotive?

23 A No, he wasn't as proficient doing automotive work as he
24 was in tires.

25 Q What automotive work was that?

1 A He was working on a bus one time and seemed like he was
2 having some trouble.

3 Q What kind of trouble?

4 A He was working on the dashboard, trying to remove the
5 dashboard.

6 Q And what was the problem; it was stuck?

7 A Yeah, look like he just was having trouble getting it up,
8 getting it off.

9 Q Okay. Any other problem?

10 A No.

11 Q Okay. So Mr. Sebala knew how to perform his job working
12 with tires from your observations, correct?

13 A Yes.

14 Q On 12/13/02, were you the acting supervisor in the tire
15 shop?

16 A Yes.

17 Q Do you recall Mr. Sebala stating to you the words: "What,
18 you like something?"

19 A Yes.

20 Q Back on 12/13/02, you did not write anything down about
21 that incident, correct?

22 A No.

23 Q You did tell Supervisor Nunes about the incident, though,
24 correct?

25 A Yes.

1 Q But Supervisor Nunes did nothing on the date you told him
2 about it, correct?

3 A Not that I know of, no.

4 Q And on that date Supervisor Nunes did not tell you:
5 "Write something down about that incident," correct?

6 MAJOR WIRTANEN: Objection, Your Honor. At this point
7 the plaintiff is leading this witness. This is a mere
8 co-worker, this is not a management official, and there's --

9 THE COURT: She's right, you know.

10 MS. CARPENTER-ASUI: Yes, Your Honor. Okay.

11 BY MS. CARPENTER-ASUI:

12 Q Did -- did you write down anything about the 12/13/02
13 incident?

14 A At that time or later?

15 Q Back when it happened in December '02.

16 A No.

17 Q Now, three years later, in 2005, did you write down
18 something what happened?

19 A Yes.

20 Q And why did you three years later write down something
21 about it?

22 A Mr. Nunes asked me to.

23 Q Okay.

24 THE COURT: Who did?

25 THE WITNESS: Mr. Randy Nunes.

1 BY MS. CARPENTER-ASUI:

2 Q And did he tell you why he needed something written down
3 three years later?

4 A Yes.

5 Q What did he say?

6 A That he had a discrimination complaint from Peter Sebala
7 and if I could write down -- write down what happened back in
8 December '02.

9 Q And did Supervisor Nunes ask you if you had heard of any
10 other incidents involving Mr. Sebala?

11 A I think he mentioned if there was anything else that
12 happened between me and Mr. Sebala, but the answer was no.

13 Q Okay.

14 A That was the only incident.

15 Q And how long did it take you and Supervisor Nunes to work
16 on that statement?

17 A Between 30 to an hour.

18 Q Who did the typing of the statement?

19 A Mr. Nunes.

20 Q Now, that statement had no date on it. Do you know why
21 there was no date on your statement?

22 A No.

23 Q Did you and Mr. -- Supervisor Nunes discuss putting a date
24 on the statement that would reflect three years later?

25 A No.

1 evidence. These words came from nowhere.

2 THE COURT: Yeah, I don't know that that has -- never
3 been testified to.

4 MS. CARPENTER-ASUI: Let me ask Mr. Soares.

5 THE COURT: Did Mr. Vargas ever say something like
6 that to you?

7 THE WITNESS: Not "bitch."

8 THE COURT: No.

9 THE WITNESS: I never heard the word "bitch."

10 THE COURT: He didn't say "bitch."

11 MS. CARPENTER-ASUI: Okay. I'll leave that off.

12 BY MS. CARPENTER-ASUI:

13 Q So what about the rest of it?

14 A His words was: "Worry about your F'n self. Worry about
15 your F-U-C-K self."

16 Q Did you write a statement about that?

17 A I wasn't asked to write a statement, no.

18 Q Mr. Nunes never asked you to write up a statement about
19 Mr. Vargas?

20 A No, I had a talk with -- Mr. Nunes talked to me and
21 Vargas.

22 Q But he only asked you to write up a statement about
23 Mr. Sebala?

24 A Yes.

25 THE COURT: Mr. Vargas hasn't sued anybody.

1 MS. CARPENTER-ASUI: Yes, Your Honor.

2 BY MS. CARPENTER-ASUI:

3 Q When you wrote that statement, you were on duty working
4 for the federal --

5 THE COURT: Only need paper when you're in a lawsuit.

6 MS. CARPENTER-ASUI: Yes, Your Honor.

7 BY MS. CARPENTER-ASUI:

8 Q But when you wrote that statement, you were on duty
9 working for the federal government, right?

10 A Yes.

11 Q And you were being paid?

12 THE COURT: You mean now?

13 MS. CARPENTER-ASUI: No, when he was writing the
14 statement about Mr. Sebala.

15 BY MS. CARPENTER-ASUI:

16 Q You were being paid?

17 A Yes.

18 Q And Randy Nunes was the supervisor that asked you to write
19 that statement, correct?

20 A Yes.

21 Q Do you have any evidence to the statement -- you said that
22 Michael Oyadomari and Mr. Sebala are friends. What evidence do
23 you have that they are some kind of friends?

24 A What I said in my deposition was when you work with
25 someone, you become friends. I was friends with Peter, too,

1 A Pharr-San Juan-Alamo High School.

2 Q In what state?

3 A Texas.

4 Q Would you list each of your employers that you worked for
5 after high school beginning with your first job after high
6 school up to the present, and tell us the dates.

7 A United States Army, June '95 to December 1997.
8 Quintinilla Security.

9 Q Spell.

10 A Q-U-I-N-T-I-N-I double L-A.

11 Q Security?

12 A Yes.

13 Q Dates?

14 A I'm not too sure on the dates.

15 Q Years?

16 A 1998, in about that year, 'til 1998.

17 Q Next?

18 A And then Simon -- Simon, S-I-M-O-N, Corporation, 1998 to
19 1999. Then Ryder Transportation, 1998 to 1999. Then Laidlaw
20 Transit, 1999 to 2000. And Godinez, G-O-D-I-N-E-Z, Customs
21 Brokerage, that was from 2000 to 2001. Then Thanks Auto Body,
22 2001 -- I mean, correction, 2000 to 2001. And then Hickam Air
23 Force Base, 2002 to the present.

24 Q What job titles did you hold when you worked for the U.S.
25 Army from June '95 to 12/97?